IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 11733 of 2007(V)

PETITIONERS:

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1. **REMA.S.O., MANAGEMENT ASSISTANT,**
   VEGETABLE AND FRUIT PROMOTION COUNCIL KERALAM,
   TRAINING CENTRE, ETTUMANOOR, KOTTAYAM.

2. **R.RAJEEV, SERVICE ASSISTANT,**
   DO. DO.

3. **C.PRATHEESH, SERVICE ASSISTANT,**
   VEGETABLE AND FRUIT PROMOTION COUNCIL KERALAM,
   MUTHRI BHAVAN, KAKKANAD, KOCHI.

4. **KAVYA.S., OFFICE ASSISTANT,**
   BIO TECHNOLOGY AND MODEL HORTICULTURE CENTRE,
   VEGETABLE AND FRUIT PROMOTION COUNCIL KERALAM,
   KAZHAKUTTAM, THIRUVANANTHAPURAM.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER
SMT.PRIYA VIJAYAN

RESPONDENTS:

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1. **THE STATE OF KERALA, REPRESENTED**
   BY ITS SECRETARY, DEPARTMENT OF AGRICULTURE,
   THIRUVANANTHAPURAM.

2. **VEGETABLE AND FRUIT PROMOTION COUNCIL**
   KERALAM, REPRESENTED BY ITS CHIEF EXECUTIVE
   OFFICER, MUTHRI BHAVAN, NEAR DOORDARSHAN KENDRA,
   KAKKANAD-682 037.

BY ADV. SRI.N.SUGATHAN, SC
SMT.VARSHA BHASKAR
BY SR.GOVERNMENT PLEADER SRI. V.T.K.MOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007 ALONG WITH WPC NO. 11174 OF 2007 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.11733/2007 V

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF MINUTES OF MEETING OF THE BOARD OF DIRECTORS REGARDING REGULARISATION OF THE STAFF.**

EXT.P2: **COPY OF APPOINTMENT ORDER DTD. 28/01/2006 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.**

EXT.P3: **COPY OF APPOINTMENT ORDER DTD. 28/01/2006 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.**

EXT.P4: **COPY OF APPOINTMENT ORDER DTD. 28/01/2006 ISSUED BY THE 2ND RESPONDENT TO THE 3RD PETITIONER.**

EXT.P5: **COPY OF APPOINTMENT ORDER DTD. 28/01/2006 ISSUED BY THE 2ND RESPONDENT TO THE 4TH PETITIONER.**

EXT.P6: **COPY OF LETTER DTD. 29/12/2006 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.**

EXT.P7: **COPY OF ORDER DTD. 30/03/1993 OF APPOINTMENT GIVEN IN FAVOUR OF ONE P.P.MUKUNDAN.**

EXT.P8: **COPY OF REPORT DTD.NIL PREPARED BY THE COMMITTEE CONSISTING OF THE MINISTER FOR AGRICULTURE, SECRETARY TO THE DEPARTMENT OF AGRICULTURE, AND THE C.E.O. OF THE COMPANY.**

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): **COPY OF LIST OF 25 PERSONS PLACED BEFORE THE BOARD OF DIRECTORS FOR CONSIDERATION.**

EXT.R2(B): **COPY OF ORDER DTD. 30/03/2007 TERMINATING THE SERVICE OF THE 1ST PETITIONER.**

EXT.R2(C): **COPY OF ORDER DTD. 30/03/2007 TERMINATING THE SERVICE OF THE 2ND PETITIONER.**

EXT.R2(D): **COPY OF ORDER DTD. 30/03/2007 TERMINATING THE SERVICE OF THE 4TH PETITIONER.**

EXT.R2(E): **COPY OF MINUTES OF 24TH MEETING OF THE BOARD OF DIRECTORS HELD ON 25/01/2006 WITH THE SUB COMMTITEE REPORT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

K.BALAKRISHNAN NAIR,J.

WP(C)NOS.11174,11306,11314 & 11733 OF 2007

Judgment

The petitioners in these Writ Petitions are employees of the Vegetable and Fruit Promotion Council, Kerala, which is a company, registered under the Indian Companies Act, 1956. The Government of Kerala, it is submitted, have pervasive control over the said company. The Minister for Agriculture is the Chairman of the company. The Agricultural Production Commissioner is also a member of the Board of Directors. There are two other nominees of the Government also among the Directors of the Board. The Chief Executive Officer of the company is also appointed by the Government. So, the petitioners submit, it is a company, amenable to the writ jurisdiction of this Court. These Writ Petitions are filed, challenging their termination from the service of the Company. The respondents would point out that the Government have only 23% shares in the company. Majority of the shares is held by the farmers organisations. Therefore, a preliminary objection is raised by the respondents that no writ will lie against the said company.

2. If a body is discharging public function, even if it is a non-statutory body, the same is amenable to the writ jurisdiction of this Court. The above principle laid down by the English Courts in ***R v. Criminal Injuries Compensation Board*** (1967 (2) All ER 770 and ***R v. Panel on Take overs*** (1987(1) All ER 564) has been

adopted and followed by our Apex Court in ***Unnikrishnan.J.P. v. State of Andhra Pradesh*** (1993(1) SCC 645). The Vegetable and Fruit Promotion Council, Kerala is mainly engaged in the public function of promoting cultivation of vegetables and its marketing for the benefit of farmers and consumers of Kerala. It is sponsored and supported by the Government of Kerala. It is functioning under the guidance of the Minister for Agriculture and the Agricultural Production Commissioner. Therefore, it must be held to be amenable to the writ jurisdiction of this Court while discharging the above public function. So, the preliminary objection raised by the respondents cannot be accepted.

3. For mentioning the exhibits and other facts, Writ Petition (C) No.11733/07 is treated as the main case.

Writ Petition (C) No.11733/07

4. The petitioners in this Writ Petition are working in the cadre of Management Assistant/Service Assistant/Office Assistant. Initially, they were engaged on daily wage basis. They were appointed on regular basis by Exts.P2 to P5 orders on 28.01.2006. Their appointment was on probation for a period of one year. When they were going to complete the period of probation, by Ext.P6 order dated 29.12.2006, their probation was extended for a period of three months. Later, they were terminated from service by the Chief Executive Officer on 30.03.2007. The

termination orders were not served on them. When they received the copies of the same along with the counter affidavit filed by the second respondent company, they amended the Writ Petition, incorporating the challenge against the said orders also. The petitioners point out that the Board of Directors of the 2nd respondent company decided to regularise them as per Ext.R2(e) resolution dated 25.01.2006. It considered the recommendations made by the sub-committee, which was specifically constituted to consider the proposal for regularisation of the contract staff. The sub-committee consisting of the then Minister for Agriculture, the Agricultural Production Commissioner and the Chief Executive Officer, was of the view that all staff with one year experience can be regularised, subject to assessment of their performance. The Board of Directors considered the said recommendation and took a decision to regularise all contract staff, who have completed one year of service. It was also resolved to form a screening committee to evaluate the casual/daily wage employees. Those found suitable were to be appointed on contract basis initially. Pursuant to the above resolution, the petitioners submit, they were regularised. But, without notice, they were terminated by Ext.R2(b) and similar orders dated 30.03.2007. The petitioners point out that they were regularised, based on the resolution of the Board of Directors. But, without the consent or approval of the Board, the Chief Executive Officer has terminated them.

They submit, the order being one passed in violation of the principles of natural justice, is ab initio void. The decision was taken in the case of the petitioners for regularising them by the Board and therefore, the Chief Executive Officer has no authority to terminate them, it is submitted.

5. The 2nd respondent has filed a counter affidavit and also an additional counter affidavit. The petitioners have filed a reply affidavit. In the counter affidavit, the second respondent would point out that the resolution of the Board of Directors only authorised regularisation of contract employees. Concerning daily wage/casual employees, the decision was to form a screening committee to evaluate them and persons found suitable were to be appointed on contract basis. The sub committee only identified 23 casual employees for such appointment. But, the Chief Executive Officer regularised 53 daily wage employees on regular basis. According to the said respondents, some of them have never worked on daily wage basis. It is also pointed out that the appointment of the petitioners was against the Staff Regulations of the 2nd respondent company, approved on 24.02.2001. The Staff Regulations provide for appointment by inviting applications through public notification or from candidates sponsored by the employment exchange or by campus recruitment. The petitioners were selected without following any of the aforementioned procedure. So, their appointment being illegal, is ab initio void. Therefore, the absence of notice will

not vitiate the termination orders, it is submitted.

6. I heard the learned counsel on both sides. The petitioners approached this Court, when their termination was imminent or immediately after knowing about the termination orders. Pursuant to the interim orders granted by this Court, all of them are continuing in service. It is common case that the impugned orders have been issued in violation of the principles of natural justice. But, the learned counsel for the 2nd respondent, relying on the decision of the apex court in ***National Fertilizers Ltd v. Somvir Singh*** (2006(5) SCC 493), submitted that the appointment made in violation of the Staff Regulations is a nullity. So, the same did not confer any right on the petitioners, it is pointed out. So, they can be terminated without notice, it is contended.

7. Normally, no one shall be condemned unheard. A decision affecting the rights of others can be taken only after hearing them. This is the first and basic principle of natural justice. But, over the years, an exemption has been carved out to the said rule, where the courts have declined to interfere when they feel that no purpose will be served by hearing the other side or the result is obvious from the start. In such cases, the courts decline to issue futile writs. The learned Authors H.W.R.Wade and Forsyth in their Administrative Law 9th edition, have summarised the above legal position under the heading "W*here a fair hearing would make no*

difference", which reads as follows :

> *"Procedural objections are often raised by unmeritorious parties, Judges may then be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. But in principle, it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly. Lord Wright once said: (in General Medical Council v. Spackman [1943] AC 627 at page 644):*
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> 'If the principles of natural justice are violated in respect of any decision it is, indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.'
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> *The dangers were vividly expressed by Megarry J, criticising the contention that 'result is obvious from the start' (John v. Rees [1970] Ch. 345 at page 402):*
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> 'As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of

unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.'

The last few words are especially apt for administrative decisions. They were adopted in a later case where the court quashed a Secretary of State's order reducing a local authority's rate support grant for failure to grant them a hearing at the proper time (R. v. Secretary of State for the Environment ex p. Brent LBC [1982] QB 593). Even though it was 'certainly probable' that the decision would have been the same, since all the arguments had been fully rehearsed at an earlier stage, the court declined to hold that a hearing would have been a useless formality. In another case, it has been held that it is a breach of natural justice for a magistrates' court to order the destruction of a dog under the Dangerous Dogs Act 1991 without hearing the owner, even where the court has no discretion but to order the destruction, since the procedure was fundamentally faulty. The argument that it would not have made any

difference 'is to be treated with great caution. Down that slippery slope lies the way to dictatorship'. (R. v. Ealing Magistrates' Court ex p. Fanneran [1996] 8 Admin. LR 351). In the leading case Bingham LJ gave six reasons why such a holding should be a very rare event, although the court then proceeded so to hold in validating the dismissal of a probationer police constable for obesity, a physical fact which could not be gainsaid, even though an adverse report about him was not disclosed. (R. v. Chief Constable of Thames Valley Police ex p. Cotton [1990] IRLR 64). And in a difficult case where the police did not disclose adverse reports on ex-prisoners before informing their neighbours that they were convicted paedophiles, the Court of Appeal held that although the reports or at least their gist, should have been disclosed, the omission was immaterial since disclosure would have made no difference. (R. v. Chief Constable of North Wales Police ex. p. AB [1998] 3 WLR 57). This question profoundly affected the course of Ridge v. Baldwin. The argument favoured by the lower courts and in

Lord Evershed's dissenting speech, was that natural justice need to be enforced in the absence of a miscarriage of justice or some probable effect on the result. (1963) 1 QB page 556). The House of Lords rejected this reasoning decisively, but nevertheless it has made a reappearance in several later cases. In one, a university student had been rusticated without a hearing and in breach of natural justice, but the courts refused him relief on the ground that his offence was of the kind that merited a severe penalty and the penalty inflicted on him was perfectly proper. (Glynn v. Keele University [1971] 1 WLR 487). In another case, where a school teacher's dismissal was annulled by the House of Lords because he had not been fairly heard, it was said that a man had no right to be admitted to state his own case unless he could show that he had a case of substance to make, since the 'court does not act in vain'; and that it need not be determined whether a hearing was required where it 'could only be a useless formality' because there was nothing that the

person affected could say against the action taken. (Malloch v. Aberdeen Cpn. [1971] 1 WLR 1578). Much the same was said by the Court of Appeal where car-hire drivers were banned from London Airport because of repeated and persistent offences against the regulations. (Cinnamond v. British Airports Authority [1980] 1 WLR 582). There may be cases where it is merely futile to grant relief, as where food hawkers were refused street trading consent without being allowed to see objections which had been lodged but which, as was found when the judge inspected them, could not have affected the decision. (`R. v. Briston CC ex. `p. [1984] 83 LGR 711).

Judges are naturally inclined to use their discretion when a plea of breach of natural justice is used as the last refuge of a claimant with a bad case. But, that should not be allowed to weaken the basic principle that fair procedure comes first and that it is only after hearing both sides that the merits can be properly considered. A distinction might perhaps be made according to the nature

of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless. But, in the case of a discretionary administrative decision, such as the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified. (1964) AC 40). This is the essence of good and considerate administration and the law should take care to preserve it."

8. Whether the hearing will be an empty formality, is a question of fact, which should be decided from case to case, based on the facts of each case. So, there cannot be any mechanical application of the principle laid in one case to the facts of another case. Having regard to the facts of the case, the petitioners could have urged that they were appointed on regular basis on probation by the appointing authority. The said appointment was supported by a Board resolution also. Even if there is deviation from the Board resolution, the Board of Directors have acquiesced

to the said resolution for a period of one year. So, implied ratification of the Board may be presumed. So, they could have contended that the present action of the Chief Executive Officer, unsupported by a fresh resolution of the Board of Directors is invalid. I am not saying whether these contentions are valid or liable to be accepted, but it is not a case where they have no answer at all to the proposal to terminate them. So, in fairness, the petitioners should have been given an opportunity of being heard before they were terminated from service. Whether their appointment is a nullity and therefore, liable to be set aside, is itself a matter, which can be properly decided, only after hearing them.

9. Accordingly, the impugned termination orders are quashed for violation of the principles of natural justice. Those orders shall only be treated as notices issued to the petitioners. They may submit their reply to the Chief Executive Officer of the 2nd respondent company within one month from today. Thereafter, the competent authority of the 2nd respondent shall consider their representations and shall pass appropriate orders on them in accordance with law, adverting to the merits of each individual case and after affording them an opportunity of personal hearing. In other words, there cannot be any omnibus order, purporting to deal with all the contentions. Speaking orders shall be passed on their representations. It is made clear that I have not expressed any opinion on the merits of the contentions raised

by the petitioners and the 2nd respondent.

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10. The facts of these cases are identical to the facts of Writ Petition (C) No.11733/07. So, it is ordered that the Judgment in that Writ Petition will govern these Writ Petitions also.

The Writ Petitions are disposed of as above.

23.07.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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